

MAY 31 1977

MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States**OCTOBER TERM, 1976**

No. 76-1509

JOSEPH E. SEAGRAM AND SONS, INC.,
Appellant,

vs.

**CARL A. JONES, S. J. KING, and FRANK W. PHIL-
LIPS, Comprising the ALCOHOLIC BEVERAGE COM-
MISSION OF THE STATE OF TENNESSEE: E. LEE
HYDEN, Director of the ALCOHOLIC BEVERAGE
COMMISSION OF THE STATE OF TENNESSEE;
LIPMAN BROS., INC., and SOUTHERN DISTRIBUTORS CORP.,***Appellees.***On Appeal from the Court of Appeals of the
State of Tennessee****MOTION TO DISMISS OF THE TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION, ITS
MEMBERS AND DIRECTOR****WILLIAM C. KOCH, JR.**
Assistant Attorney General
State of Tennessee450 James Robertson Parkway
Nashville, Tennessee 37219**OF COUNSEL:****BROOKS McLEMORE**

Attorney General and Reporter

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OPINIONS BELOW

The Order on Motion for Summary Judgment entered by the Sixth Circuit Court of Davidson County, Tennessee on January 12, 1976, is unreported but appears as Appellant's Appendix A. The Opinion of the Middle Section of the Court of Appeals of Tennessee is reported at 548 S. W. 2d 667. The Order of the Tennessee Supreme Court denying the Appellant's Petition for Writ of Certiorari is unreported but appears as Appellant's Appendix C.

JURISDICTION

The opinion and judgment of the Middle Section of the Court of Appeals of the State of Tennessee was entered on September 3, 1976. The Tennessee Supreme Court declined to review this case on February 7, 1977. On April 29, 1977, the Jurisdictional Statement was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (2).

QUESTIONS PRESENTED

1. Whether the Tennessee Alcoholic Beverage Commission, having been delegated broad rule-making authority and the general responsibility to regulate the purchase and sale of alcoholic beverages, has sufficient rule-making authority to enable it to promulgate an administrative regulation pertaining to the transfer of the distributorship of a brand of alcoholic beverage from one licensed wholesaler to another.

2. Whether the Fifth and Fourteenth Amendments to the United States Constitution require the Tennessee Alcoholic Beverage Commission to prescribe and thereby limit the scope of its decision-making rationale when promulgating a regulation pertaining to the transfer of the distributorship of a brand of alcoholic beverage from one licensed wholesaler to another.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

"No person shall * * * be deprived of life, liberty, or property, without due process of law * * *."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

"Section 1. * * * Nor shall any State deprive any person of life, liberty, or property, without due process of law * * *."

REGULATION INVOLVED

Rule 0100-3-.13(7) of the Regulations of the Tennessee Alcoholic Beverage Commission provides:

"No manufacturer, importer or other person shall be permitted to transfer a brand from one wholesale distributor to another without written approval of the Commission. Requests for approval of a transfer must be submitted in writing and a copy of said request must at the same time be sent to the wholesale distributor in whose name the brand is then registered.

After due consideration, the Commission shall either approve or disapprove the transfer. If the Commission disapproves the transfer, the brand shall remain in status quo, and failure on the part of the manufacturer or importer so denied to ship his wholesaler a reasonable amount of the brand sought to be transferred will result in the withdrawal of approval of all its brands."

STATEMENT OF THE CASE

On September 14, 1973, the Appellant requested that the Alcoholic Beverage Commission give its permission pursuant to Regulation ABC 13:70* to transfer the distributorship of its Wolfeschmidt Vodka brand from Southern Distributors Corporation and Lipman Brothers to four other wholesalers who then possessed the franchise to sell six other brands of alcoholic beverages marketed by Seagram Distillers. On September 24, 1973, the Commission requested that the Appellant furnish information which would substantiate its claim that reassignment of the brand was in the best interests of the sale of Wolfeschmidt Vodka. The Appellant sent certain information to the Commission on October 5, 1973.

The Commission conducted a hearing on this transfer request on November 16, 1973. At the conclusion of this hearing, the Commission ruled that within ninety days, the parties should either resolve these issues between themselves or should supply to the Commission further information which would economically justify the brand transfer.

On February 22, 1974 and later on November 1, 1974, the Appellant renewed its request for permission to transfer the Wolfeschmidt Vodka brand. This request was again opposed by Southern Distributors and Lipman Brothers, both of whom claimed there was no economic basis justifying the Appellant's request to transfer the Wolfeschmidt Vodka brand.

*Now referred to as Rule 0100-3-.13(7).

The Commission conducted another hearing into this matter on December 20, 1974. Again the Appellant attempted to justify its transfer request by claiming that its standard merchandising program was made more difficult when two different wholesalers distributed only portions of its line of products. Both Lipman Brothers and Southern Distributors introduced their sales figures to refute the Appellant's claim that they were not effectively promoting Wolfeschmidt Vodka.

On January 10, 1975, the Commission voted unanimously to deny the Appellant's request to transfer the Wolfeschmidt Vodka brand.

Subsequently, the Appellant filed a suit in the Sixth Circuit Court for Davidson County, Tennessee seeking judicial review of the Commission's action through a common law writ of certiorari. For the first time in these proceedings, the Appellant also claimed that Rule 0100-3-.13(7) of the Rules of the Alcoholic Beverage Commission violated the Fifth and Fourteenth Amendments to the United States Constitution.

The Circuit Court eventually dismissed the writ of certiorari because it had not been timely filed. However, the Court retained jurisdiction over the Appellant's prayer for declaratory relief and then granted the Appellant's Motion for Summary Judgment and held that the challenged rule violated "the due process clauses of both the Federal and State Constitutions." Appellant's Appendix A, p. 2a.

The Commission and the other original defendants perfected an appeal. On September 3, 1976, the Middle Section of the Court of Appeals of Tennessee overruled the

decision of the Circuit Court and held that Rule 0100-3-.13(7) was constitutional. The Appellant filed a Petition for Writ of Certiorari in the Tennessee Supreme Court, but on February 7, 1977, the Court declined to hear the case.

ARGUMENT

1. The decision of the Court of Appeals that the Tennessee Alcoholic Beverage Commission had the authority to promulgate Rule 0100-3-.13(7) does not present a substantial federal question. See generally *Welch v. Swasey*, 214 U. S. 91, 104, 29 S. Ct. 567, 570 (1909). This Court has consistently adhered to the principle that the construction of the meaning of state statutes by state courts is binding upon this Court. *Gurley v. Rhoden*, 421 U. S. 200, 95 S. Ct. 1605 (1975). Thus, the decision of the Tennessee Court of Appeals that Tennessee Code Annotated, Sections 57-109(3) and 57-819 gave the Commission the authority to promulgate the challenged regulation should be binding upon this Court.

2. The authority of a state to regulate and even prohibit the sale of alcoholic beverages within its borders by virtue of its inherent police power and the Twenty-first Amendment to the United States Constitution is so well established that the questions raised by the Appellant are sufficiently insubstantial not to merit further argument. Six years after the Twenty-first Amendment was enacted, this Court held:

"The State may protect her people against evil incident to intoxicants . . . and may exercise large discretion as to means employed."

Ziffrin v. Reeves, 308 U. S. 132, 138-139, 60 S. Ct. 163, 167 (1939).

This broad policy statement has been consistently enunciated by the Court. *California v. La Rue*, 409 U. S. 109, 114-115, 93 S. Ct. 390, 395 (1972), reh. denied 410 U. S. 948, 93 S. Ct. 1351 (1973); *Joseph E. Seagram and Sons, Inc. v. Hostetter*, 384 U. S. 35, 42, 86 S. Ct. 1254, 1259, reh. denied 384 U. S. 967, 86 S. Ct. 1538 (1966); and *Eberle v. Michigan*, 232 U. S. 700, 707, 34 S. Ct. 464, 466 (1914).

3. Because it cannot be legally disputed that a state may legitimately protect the health, safety and morals of its citizens by stringently regulating the traffic of alcoholic beverages, this Court has recognized that state agencies having the authority to regulate the purchase and sale of alcoholic beverages should be given wide latitude as to their choice of the means to accomplish this permissible end. *California v. La Rue*, *supra*, 409 U. S. at 116, 93 S. Ct. at 396. The scope of the regulations adopted by these agencies should be left to the agencies' own quasi-legislative determination not to the courts. *Purity Extract and Tonic Company v. Lynch*, 226 U. S. 192, 201-202, 33 S. Ct. 44, 46 (1912), and such regulations which have a reasonable relationship to their goals should be upheld even though they may have an incidental tendency to impair the value of property. *Eberle v. Michigan*, *supra*, 232 U. S. at 466, 34 S. Ct. 466. Thus, one state court has held that a state legislature could regulate the sale of alcoholic beverages in such a way as to create a sparse profit situation. *Joseph E. Seagram and Sons, Inc. v. Hostetter*, 16

N. Y. 2d 47, 55, 262 N. Y. 2d 75, 79 (1965), aff'd 384 U. S. 35, 86 S. Ct. 1254 (1966).

4. The Appellant's claims that the procedure embodied in Rule 0100-3-13(7) violates due process must fail when its private interests are compared to the importance of the governmental interests involved. *Goldberg v. Kelly*, 397 U. S. 254, 263-266, 90 S. Ct. 1011, 1017-1020 (1970). Due process is flexible and calls for such procedural protections as the particular situation demands. *Morrissey v. Brewer*, 408 U. S. 471, 481, 92 S. Ct. 2953, 2600 (1972). Generally, due process requires that a person whose property interests are being affected should be given an opportunity to be heard at a meaningful time and in a meaningful manner. *Matthews v. Eldridge*, 424 U. S. 319, 333, 96 S. Ct. 893, 902 (1976). The facts of this case show that the Appellant's interest in selling a particular brand of alcoholic beverage through a particular wholesaler is not as significant as Tennessee's interest in regulating the purchase and sale of alcoholic beverages. Further, the challenged regulation on its face allows a hearing at the manufacturer's request when a manufacturer such as the Appellant desires to change wholesale distributors. Nothing in the regulation limits the scope of the Appellee's proof or its access to the Commission and thus it can present to the Commission whatever justifications it deems appropriate at a time it deems appropriate. Further, Tennessee's Uniform Administrative Procedures Act (Tennessee Code Annotated, Section 4-523) provides for speedy judicial review of any final decision by the Commission. The addition of additional procedural safeguards such as those advocated by the Appellant would be of little value to the similarly situated manufacturers. If the Commis-

sion were to enunciate all the possible bases for its decision in a regulation, then it would be compelled to frame the regulation in the broadest possible terms to avoid the possibility of foreclosing certain proof which could be advanced to support a brand transfer. This proof is directly related to the unique facts of each particular case, and so it would be difficult to draft anything but a general regulation which would be broad enough to cover every situation which could arise.

5. To impose upon the Commission a requirement that it establish the criteria for its decision in proceedings pursuant to Rule 0100-3-13(7) before any particular proceeding is held would be similar to requiring a court to announce the basis of its decision before it hears a case. Such a requirement stretches the concept of procedural due process to its outer limits and would impose a requirement even more demanding than those required in *Goldberg v. Kelly, supra*, where more significant and well defined property interests were involved. No Court to the Commission's knowledge has held that a state may not regulate and approve a manufacturer's desire to transfer one of its brands of alcoholic beverages from one wholesaler to another. This type of regulation having its legal basis in the police power of the States and in the Twenty-first Amendment to the United States Constitution is clearly permissible, and the vehicle chosen to effectuate such a regulation should be permitted to remain flexible.

6. The Appellant is not questioning, and indeed has been precluded from questioning by its own inaction, the particular result reached by the Commission in this case. Because of its inability to raise this issue, it is left solely

with the question of the validity of Rule 0100-3-13(7) on its face. The procedure contemplated by this regulation adequately protects the Appellant's interests, the competing interests of the affected wholesale distributors, and the public interests being protected by the State. This is especially the case because any aggrieved party can obtain judicial review of the Commission's final decision.

CONCLUSION

It is, therefore, respectfully submitted that this appeal should be dismissed because the matters contained therein do not present a substantial federal question warranting further briefing or argument.

Respectfully submitted,

WILLIAM C. KOCH, JR.
Assistant Attorney General
State of Tennessee

450 James Robertson Parkway
Nashville, Tennessee 37219